

VZCZCXRO3028
PP RUEHAG
DE RUEHCV #2693/01 2492207
ZNY CCCCC ZZH
P 062207Z SEP 06
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC PRIORITY 6178
INFO RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS PRIORITY
RUEHROV/AMEMBASSY VATICAN PRIORITY
RUEHAO/AMCONSUL CURACAO PRIORITY 1013
RUEHGL/AMCONSUL GUAYAQUIL PRIORITY 0652
RUEHBS/USEU BRUSSELS PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 0500
RHEHNSC/NSC WASHDC PRIORITY
RUMIAAA/HQ USSOUTHCOM MIAMI FL PRIORITY
RUEHUB/USINT HAVANA PRIORITY 0979
RUCNMEM/EU MEMBER STATES COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 002693

SIPDIS

SIPDIS

HQSOUTHCOM ALSO FOR POLAD
DEPT PASS TO AID/OTI RPORTER

E.O. 12958: DECL: 08/04/2016

TAGS: [PGOV](#) [KDEM](#) [VE](#)

SUBJECT: THE BOLIVARIAN PLAYBOOK: WRITING A CONSTITUTION

REF: A. LA PAZ 001414

[1](#)B. LA PAZ 001283

CARACAS 00002693 001.3 OF 003

Classified By: POLITICAL COUNSELOR ROBERT DOWNES,
FOR REASON 1.4 (D)

Summary

[1](#)1. (C) Post offers this look at President Chavez' Constituent Assembly in order to provide insight to other governments in the region that may follow a similar path (reftels). Chavez convoked in 1999 a Constituent Assembly that, in the end, provided Chavez with a constitution that abetted his attempts to centralize political authority in his hands and was ambiguous enough to provide him legal justification for his questionable tactics in implementing his Bolivarian revolution. The Constituent Assembly's modus operandi provided early insight into a government that has gradually but decisively moved in an authoritarian direction. Chavez ensured the National Constituent Assembly (ANC) was stacked with his supporters, gave it supra-constitutional power, and used the body to appoint close allies to supposedly unbiased government bodies. The Constituent Assembly provided Chavez with an early and ample opportunity to tighten his grip over Venezuelan political life, most immediately by usurping the powers of the legislative and judicial branches, and set the stage for a systematic erosion of the country's democratic institutions. End Summary.

An Election Promise Fulfilled

[1](#)2. (C) Key to implementing Chavez' 1998 campaign promise to sweep aside the existing political order and "re-structure and re-legitimatize the Venezuelan state" was writing a new constitution. His chosen mechanism to do so was a Constituent Assembly. After winning the election in December 1998 with well over 50 percent of the vote, Chavez moved swiftly to lay the groundwork for the Constituent Assembly. Within his first few weeks in office, he issued a decree calling for a referendum on his proposal, ordered the

National Electoral Council (CNE) to begin referendum preparations, and won the Supreme Court's approval for the referendum. The referendum on the Constituent Assembly was held on April 25, 1999, and voters overwhelmingly agreed to Chavez' proposed National Constituent Assembly (ANC), as well as his proposed means of convoking it, giving the Bolivarian leader the required mandate to proceed with his plans on his terms.

Ensuring a Sympathetic ANC

¶3. (C) Chavez' ability to stack the ANC in his favor was critical to his success in obtaining a constitution to his liking. With the referendum behind him, Chavez quickly turned his focus to the election--held on July 25, 1999--to select the 131 ANC members, which included 24 national seats, 104 regional seats, and three representatives from indigenous communities. In a harbinger of things to come, Chavez took liberties with both the candidate selection and campaign process. Chavez hand-picked key candidates and then personally campaigned for them, despite a CNE ruling that high public officials could not do so. He was later sanctioned for ignoring the ruling, but his support was likely determinant in the election of his favored candidates.

¶4. (C) Chavez' efforts paid off, and his candidates won a landslide victory in the July 1999 elections, winning 119 of the 131 seats, plus the three seats reserved for indigenous representatives. Two opposition constitutional lawyers and former ANC members, Tulio Alvarez and Hermann Escarra, told poloff in separate, recent conversations that the vast pro-government majority discouraged debate and compromise and, for all practical purposes, gave Chavez free rein to

CARACAS 00002693 002.3 OF 003

draft his version of a Venezuelan constitution.

A Supra-Constitutional Body

¶5. (C) The Supreme Court ruled that the ANC did not have supra-constitutional authority, for example to dissolve and create branches of government. Emboldened by his referendum victory, Chavez ignored this decision, citing his popular mandate for change. The supra-constitutional authority abetted Chavez' efforts to exert control over other branches of government and counteract the opposition-controlled congress. Chavez demonstrated early on his tendency to propose revolutionary, destructive policies, such as closing branches of government, and then tactically retreating in the face of truculent criticism, only to once again move forward regardless, claiming he was compromising. He also moved to undermine Venezuelan institutions and used what has become a tried and true "revolutionary" technique--creating parallel structures to subvert existing ones--in order to sidestep his opponents, work around legal restrictions, and purge the judiciary.

¶6. (C) Chavez focused his efforts on undermining the judiciary and congress. Tapping into general public sentiment that the judiciary was corrupt and broken, Chavez called on the ANC to declare a "judicial emergency." At first he proposed the ANC shut down the judiciary and assume its functions, but then settled on the less controversial but still effective (from his point of view) establishment of a Judicial Emergency Committee to overhaul the court system and root out "corrupt" judges. This Emergency Committee, working parallel to another already established judicial committee, summarily fired judges without providing any measure of due process.

¶7. (C) The ANC also issued a legislative "emergency decree"

in August 1999, temporarily suspending congress and giving the ANC most of its duties. The decision drew swift criticism from opposition sectors, and, as with the judiciary, the ANC and congress eventually came to a "compromise" that ended up serving Chavez' interests. In September 1999 a "co-habitation" agreement was announced that nullified the emergency decree and left the business of legislating to the legislature. The two bodies agreed to "self-regulation," committing to act without interfering in each others' activities. Opinions on how this arrangement functioned vary. Alvarez told poloff that the ANC neutralized congress despite the co-habitation agreement. Escarra, on the other hand, argued that the congress did continue to conduct at least quasi-regular business under the arrangement. Former ANC member Vladimir Villegas, meanwhile, claimed that that ANC had supra-constitutional authority and used it.

The Final Vote

18. (C) Chavez held another referendum on December 15, 1999 to approve the new Constitution. The stakes were high for Chavez, politicians serving in his ANC coalition, and the opposition, all of whom were positioning themselves for the 2000 "mega-elections," in which the president, legislature, and regional leaders would be elected under the new constitution. In the run-up to the December 15 vote, Chavez campaigned aggressively for the "yes" vote, while six non-chavista members of the ANC, as well as business and opposition sectors, declared themselves in favor of the "no" vote. Nevertheless, Chavez' strong campaigning, the opposition's disarray, and the public's sense that they were finally being represented in the political process helped him win the "yes" vote. With abstention nearing 54 percent, the constitution was approved on December 15, 1999 with 71 percent of the vote.

ANC Manages Transition

CARACAS 00002693 003.3 OF 003

19. (C) The transition between the abrogation of the 1961 constitution in January 2000 and the "mega-elections" further facilitated Chavez' consolidation of authority. The ANC unilaterally appointed key officials of supposedly neutral government institutions, setting the stage for what has become a systematic erosion of institutional independence and electoral transparency in the so-called "Fifth Republic." Chavez and his then-mentor, ANC President Luis Miquilena, announced immediately following the referendum victory that the ANC would assume by means of a "constituent act" full responsibility for the legislative function and supervision of the judiciary, claiming that the existing legislative and judicial bodies had no basis for existence following termination of the 1961 constitution.

110. (C) On December 22, the ANC by decree passed transitional measures allowing the ANC to select a "congresillo," appoint new members to the Supreme Court, and name the Attorney General, Comptroller General, and Defender of the People with little to no consultation. All twenty additional Supreme Court justices were later confirmed by the new, post-mega-election government-controlled National Assembly. The ANC also appointed a new five member CNE board with a pro-Chavez majority, which then oversaw the 2000 "mega-elections." Opponents to the move claimed it broke legal, constitutional, and political norms.

Comment

¶11. (C) Post offers these reflections for other missions in the region in countries that may be following the Chavez path. The Constituent Assembly's modus operandi, as well as Chavez' management of it, provided early insight into a government that has moved in an authoritarian direction. While Chavez won initial legal approval for the Assembly process and claimed he was representing the will of the Venezuelan people, he also ensured the ANC was stacked with his supporters, gave it supra-constitutional power, and used the body to appoint close allies to supposedly unbiased government bodies. The series of referendums and elections related to the ANC process, as well as the "mega-elections" held following the new constitution's implementation, also served to further bankrupt and fracture Chavez' opposition. The Constituent Assembly provided Chavez with an early and ample opportunity to tighten his grip over Venezuelan political life and set the stage for a systematic erosion of the country's democratic institutions. The 1999 Constitution heavily concentrates power in the executive even by Latin American standards. It contains loopholes that allow Chavez to circumvent agencies and procedures that he would not otherwise be able to influence. Despite these advantages, Chavez has still occasionally ignored the constitution when he sees fit, and other provisions, such as a balance of power between the three branches of government, are obviated when these branches are stacked with Chavez supporters.

WHITAKER